In the Supreme Court of the United States

OCTOBER TERM, 1990

FEDERAL ENERGY REGULATORY COMMISSION, PETITIONER

v.

PUBLIC UTILITIES COMMISSION OF CALIFORNIA
AND KANSAS POWER & LIGHT COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTION PRESENTED

In this case, the Federal Energy Regulatory Commission authorized a natural gas pipeline to bill its customers for costs attributable to past purchases of gas when the account in which those costs were carried was terminated. The Commission concluded that the pipeline's customers had sufficient notice that they would be responsible for such costs and that there were in any event sufficient grounds for waiving the notice requirements in Section 4(d) of the Natural Gas Act of 1938, 15 U.S.C. 717c(d), to permit the direct billing.

The question presented is:

Whether notwithstanding the Commission's waiver, the Commission's approval of the pipeline's direct billing of its customers for costs attributable to past sales constitutes impermissible retroactive ratemaking.

PARTIES TO THE PROCEEDING

In addition to petitioner Transwestern Pipeline Company, the parties in the court of appeals were:

Citizens Energy Corporation
El Paso Natural Gas Company
Federal Energy Gas Company
Kansas Power and Light Company
Natural Gas Clearinghouse Inc.
Pacific Gas and Electric Company
Process Gas Consumers Group
PSI, Inc.
Public Utilities Commission of the State of California
Southern California Gas Company
Southwest Gas Corporation
Texas Eastern Transmission Corporation
Williams Natural Gas Company

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Acting Solicitor General, on behalf of the Federal Energy Regulatory Commission, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-25a)[1] is reported at 897 F.2d 570. The relevant orders of the Federal Energy Regulatory Commission (Pet. App. 55a-98a, 99a-127a) are reported at 43 F.E.R.C. ¶ 61,240 and 44 F.E.R.C. ¶ 61,164.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 1990, and a petition for rehearing was denied

[1] "Pet. App." refers to the appendix to the petition for a writ of certiorari in *Transwestern Pipeline Co.* v. *Kansas Power & Light Co.*, petition for cert. pending, No. 90-344 (filed Aug. 24, 1990), which seeks review of the same judgment of the court of appeals.

on May 31, 1990 (Pet. App. 26a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Sections 4 and 5 of the Natural Gas Act of 1938, 15 U.S.C. 717c and 717d, are reproduced in relevant part at App., *infra*, 1a-3a.

STATEMENT

This case involves the validity of orders of the Federal Energy Regulatory Commission permitting a natural gas pipeline to bill its downstream customers for the balance remaining in an account attributable to past purchases of gas when the pipeline terminated the account. The Commission approved the arrangement on the ground that the customers had adequate notice that they would be responsible for paying the costs involved and that there were in any event sufficient grounds for waiving the notice requirements in Section 4(d) of the Natural Gas Act of 1938 (NGA), 15 U.S.C. 717c(d), to permit the direct billing of past costs. The court of appeals nevertheless held that the direct billing constitutes impermissible retroactive ratemaking, in violation of the "filed rate doctrine." This case therefore presents issues similar to those presented in (1) *FERC* v. *Associated Gas Distributors*, petition for cert. pending, No. 89-2016 (filed June 22, 1990), in which we seek plenary review of another District of Columbia Circuit decision holding that a Commission order impermissibly permitted a retroactive rate increase, and (2) *FERC* v. *Columbia Gas Transmission Corp.*, petition for cert. pending, No. 90-131 (filed July 18, 1990), in which the D.C. Circuit held that notice beyond that waivable under Section 4(d) is required before the Commission may approve direct billing of past costs. We suggest in *FERC* v. *Columbia Gas Transmission Corp.* that the petition in that case be held and disposed of as appropriate in light of *FERC* v. *Associated Gas Distributors*. For reasons we shall explain, we urge similar treatment here.

1. This case arises from the Commission's efforts to prevent future problems resulting from take-or-pay clauses in gas purchase contracts that many pipelines entered into with producers between 1977 and 1982.[2] A take-or-pay clause obligates a pipeline to pay for a certain amount of gas at the contract price even if the pipeline does not actually take the gas. Typically, a pipeline may make up a deficiency by purchasing additional gas over a succeeding period, such as five years. By 1982, the supply of natural gas began to exceed demand, primarily because of the price incentives and phased deregulation schedule for "new" gas under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et seq.* Demand then began to fall because of warm winters, a recession, and customers' switching to alternative fuels. As a result, pipelines began to accrue substantial exposure under their take-or-pay contracts with producers. 89-2016 Pet. 4-5.

Beginning at about the same time, the Commission took a number of steps to effectuate the more competitive wellhead market instituted by the NGPA. First, the Commission eliminated the minimum bill provisions in many pipelines' tariffs, which obligated the pipelines' sales customers to pay for a certain amount of gas even if they did not actually take the gas. Second, the Commission sought to encourage pipelines to transport gas other than their own supplies. In Order No. 436,[3] the Commission required pipelines seeking blanket authorization for transportation service to become open-access pipelines, which are prohibited from refusing to transport gas in competition with their own sales and required to allow their sales customers to convert contract rights to pur-

[2] The background of the take-or-pay problem and the Commission's efforts to address it are described in greater detail in our certiorari petition (at 4-13) in ***FERC* v. *Associated Gas Distributors*** [hereinafter 89-2016 Pet.].

[3] Order No. 436, ***Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,*** [1982-1985] FERC Stats. & Regs., Regulations Preambles ¶ 30,665 (1985).

chase gas into rights to have the pipeline transport gas they purchased from others. The D.C. Circuit sustained most features of Order No. 436 in *Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (1987) (*AGD I*), cert. denied, 485 U.S. 1006 (1988), but remanded for further proceedings, because, *inter alia*, the Commission had failed either to address pipelines' take-or-pay problems in connection with its new open-access policy or to explain adequately its reasons for not doing so. The court was concerned that Order No. 436 would enable more pipeline customers to purchase gas directly from producers, thereby increasing the pipelines' take-or-pay liability and denying them bargaining leverage in settling that liability. 824 F.2d at 1020-1030; see 89-2016 Pet. 6-8.

On remand from *AGD I*, the Commission adopted Order No. 500,[4] an interim rule and policy statement that, *inter alia*, set forth guidelines under which a pipeline could bill a new charge (called a gas inventory charge) to recover on a *current* basis the cost of maintaining an inventory of gas to meet customers' contract rights to sales service. By replacing after-the-fact recovery of accrued take-or-pay liability with recovery on an ongoing basis, the gas inventory charge was expected to reduce the likelihood of a mismatch between a pipeline's gas supplies and its customers' actual purchases and to prevent accumulation of take-or-pay liability in the future. The final rule, Order No. 500-H, retained the policy statement concerning the gas inventory charge, which was to be implemented on a case-by-case basis.[5] See Pet. App. 6a-7a; 18 C.F.R. 2.105.

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[4] Order No. 500, *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regulations Preambles ¶ 30,761 (1987).

[5] Order No. 500-H, *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regulations Preambles ¶ 30,867, at 31,577 (Dec. 13, 1989), reh'g granted in part, Order No. 500-I, FERC Stats. & Regs., Regulations Preambles

2. a. On December 1, 1987, Transwestern Pipeline Company filed tariff sheets proposing (1) to allow its two major sales customers, Southern California Gas Company (SoCal) and Williams Natural Gas Company, to designate the amounts of gas they expected to purchase, and (2) to establish, for the effective period of any such designation, both a charge for Transwestern's cost of obtaining the gas that SoCal and Williams purchased and a gas inventory charge for portions of the designated amount that they did not purchase. Pet. App. 8a-9a. Because both charges were to remain unchanged during the effective period of the designations, Transwestern proposed to terminate the purchased gas adjustment (PGA) provision in its existing rate schedule. Under the PGA approach, a pipeline bills its sales customers a commodity charge [6] for a given period based on its projection, made prior to the start of the period, of the costs it will incur in purchasing the gas. Any difference between the projected and actual costs is accumulated in the pipeline's "Account No. 191" and is then collected from or refunded to the customers through a surcharge on gas purchased in the succeeding period. Pet. App. 14a. Because Transwestern's filing eliminated the system of projecting rates based on past experience, "the entire theory underlying the PGA and Account 191 became irrelevant" and Transwestern therefore proposed to terminate that account. *Ibid.* However, Transwestern sought authority under which, if both SoCal and Williams designated zero future purchases, it could bill them directly for the proportional amount of the unrecovered balance in Transwestern's Account No. 191, based on their contract demand in the prior period. *Ibid.*

¶ 30,880 (Feb. 12, 1990), aff'd in relevant part and remanded, *American Gas Ass'n* v. *FERC*, No. 87-1588 (D.C. Cir. Aug. 24, 1990).

[6] A commodity charge is a charge paid for each unit of gas actually taken, in contrast to a fixed charge, which is paid regardless of how much gas is taken.

By orders dated May 11 and July 29, 1988, the Commission approved Transwestern's proposal. Pet. App. 55a-98a, 99a-127a. In particular, the Commission permitted Transwestern to recover any uncollected balance in Account No. 191 by direct billing of SoCal and Williams, while requiring Transwestern to make direct refunds to SoCal and Williams if Account No. 191 reflected overcollections at the time it was terminated. *Id.* at 73a-74a & n.39, 86a, 112a-113a. The Commission rejected the contention that the direct billing violates the filed rate doctrine and constitutes prohibited retroactive ratemaking. It reasoned that Transwestern's customers had notice, through operation of the surcharge component of the PGA mechanism, that they would ultimately pay all actual gas costs—including those reflected in Account No. 191—and that, with the termination of the PGA, direct billing is "an appropriate surrogate" for the surcharge mechanism. *Id.* at 112a-113a. The Commission further found that, if the direct billing constituted retroactive ratemaking, there were sufficient grounds for waiving the notice requirements of Section 4(d) of the NGA to permit the arrangement. *Id.* at 113a. Section 4(d) provides that "[u]nless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate * * * except after thirty days' notice to the Commission and to the public," but that "[t]he Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice * * *."

b. A number of parties sought review of the Commission's orders in the D.C. Circuit. As relevant here, the court held that Transwestern could not bill SoCal and Williams for any of the balance in its Account No. 191 attributable to costs incurred prior to May 11, 1988, the date of the Commission's order approving Transwestern's filing. Pet. App. 14a-21a.[7] According to the court, the filed

[7] Because SoCal and Williams designated no purchases from Transwestern, the court found that most issues concerning the

rate doctrine "prohibits the Commission from imposing a rate different from the one on file at the time gas is sold * * * [and] allows purchasers of gas to know in advance the consequences of the purchasing decisions they make." *Id.* at 14a-15a. In its view, although the Commission's May 11, 1988, order provided Transwestern's customers with notice of the possibility that they would be billed directly for gas costs incurred after that date, *id.* at 15a-18a, the customers did not receive meaningful advance notice that they might be billed directly for gas costs incurred prior to that date. *Id.* at 19a-22a.

The court acknowledged that the preamble to the Commission's PGA regulations stated that their purpose was to "assur[e] [pipelines] the recovery of all purchased gas costs." Pet. App. 20a (quoting Order No. 452, *Purchased Gas Cost Adjustment Provision in Natural Gas Pipeline Companies' FPC Gas Tariffs*, 47 F.P.C. 1049, 1051 (1972)). But it concluded that this statement did not furnish pipeline customers sufficient notice to permit them to be billed for balances remaining in a PGA account when it was terminated by a pipeline, because the circumstances that might lead to the complete end of PGA sales are "varied and complex" and "there are other policy values that a customer might think would also bear upon the Commission's resolution of issues concerning unrecovered gas costs under these various scenarios. Pet. App. 20a. The court also acknowledged that two Commission decisions permitting direct billing of Account No. 191 balances when the relevant service was abandoned had indicated that the Commission interpreted the PGA regulations in a manner that was consistent with Transwestern's approach here.[8] But the court found that

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validity of Transwestern's new gas inventory charge were moot. Pet. App. 11a-13a, 22a-24a.

[8] *Western Gas Interstate Co.*, 34 F.E.R.C. ¶ 61,122, reh'g denied in part, 35 F.E.R.C. ¶ 61,012 (1986); *Locust Ridge Gas Co.*, 37 F.E.R.C. ¶ 61,295 (1986).

those decisions likewise did not furnish sufficient notice to Transwestern's customers that they might be billed in a similar manner, because, in its view, the decisions were "quite summary" and "lack[ed] any sort * * * of general rule for the treatment of Account No. 191 balances on complete termination of service." *Id.* at 20a-21a.

Finally, the court rejected the Commission's determination that even if Transwestern's customers had not previously received adequate notice of their responsibility for costs accrued prior to May 11, 1988, and the direct billing therefore constituted a retroactive rate increase, it could permit the increase by waiving the 30-day notice requirement in Section 4(d) of the NGA for "good cause shown." On this issue, the court, without further elaboration, simply followed its prior decision in *Columbia Gas Transmission Corp.* v. *FERC*, 895 F.2d 791, 796-797 (D.C. Cir. 1990) (*Columbia Gas II*), petitions for cert. pending, Nos. 89-2001 and 90-131, which held that notice beyond that waivable under Section 4(d) is required before the Commission may approve direct billing of past costs. Pet. App. 21a-22a n.7.

c. On May 31, 1990, the court of appeals denied petitions for rehearing and suggestions for rehearing en banc. Pet. App. 26a-28a.[9] In a separate statement, Chief Judge Wald explained that she had decided that it would be futile to call for a vote on rehearing en banc, in light of the court's denial of a similar suggestion in *Associated Gas Distributors* v. *FERC*, 893 F.2d 349 (1989), reh'g denied, 898 F.2d 809 (D.C. Cir. 1990) (*AGD II*), petitions for cert. pending, Nos. 89-1988, 89-1989, 89-1990, 89-2000 and 89-2016. Pet. App. 27a. She continued (*id.* at 28a):

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[9] In denying rehearing, the panel declined to address the Commission's and Transwestern's argument that Transwestern's filing in December 1987 placed its customers on notice that they would be billed for the balance in Account No. 191, because that argument had not been raised in the briefs. Pet. App. 26a.

> I think the Court's current interpretation of the filed rate doctrine is overly rigid, at a time when the FERC needs latitude to navigate the recent dramatic changes in the structure of the natural gas industry. * * * It remains for the Supreme Court to settle this important question of how impenetrable a barrier the filed rate doctrine is to FERC's efforts at allocating the inevitable burdens stemming from fundamental readjustment of the pipeline industry.

REASONS FOR GRANTING THE PETITION

The court of appeals has invalidated an important feature of the policy adopted by the Federal Energy Regulatory Commission to address and properly resolve the take-or-pay problems that have pervaded the natural gas industry for a number of years. As a practical matter, Transwestern will be unable to recover the actual costs of gas that it purchased and sold to its customers, SoCal and Williams, prior to May 11, 1988. The only permissible method of recovering those costs under the court's ruling—through a commodity surcharge on future sales pursuant to the PGA mechanism—has been eliminated, because Transwestern terminated the PGA approach in order to establish a gas inventory charge that would prevent future take-or-pay problems and because SoCal and Williams were permitted to designate no future purchases under Transwestern's new rate schedule. SoCal and Williams therefore will be able to escape costs that were incurred on their behalf, even though the basic premise of the PGA mechanism (as stated in the preamble to the Commission's regulations permitting its use) is to assure a pipeline that it will recover such costs from its customers, and even though that preamble, several Commission decisions, and Transwestern's filing in December 1987 clearly indicated that they were responsible for paying costs accumulated in Account No. 191. The decision below also may deter other pipelines from instituting a gas inventory charge

and terminating the PGA mechanism in furtherance of the Commission's policy of avoiding future take-or-pay problems.

The court of appeals held that the direct billing mechanism constitutes impermissible retroactive ratemaking, in violation of the "filed rate doctrine." In reaching this conclusion, the court applied essentially the same view of the filed rate doctrine and retroactive ratemaking that it had adopted in *Associated Gas Distributors* v. *FERC*, 893 F.2d 349 (D.C. Cir. 1989) (*AGD II*),[10] and it expressly relied on its prior ruling in *Columbia Gas Transmission Corp.* v. *FERC*, 895 F.2d 791 (D.C. Cir. 1990) (*Columbia Gas II*), in holding that notice beyond that waivable under Section 4(d) is required before the Commission may approve the direct billing of past costs. We have filed a petition for a writ of certiorari seeking plenary review of the D.C. Circuit's decision in *AGD II*, see *FERC* v. *Associated Gas Distributors*, No. 89-2016 (filed June 22, 1990), and a number of other parties have filed certiorari petitions seeking plenary review in *AGD II* as well.[11] We also have filed a petition for a writ of certiorari in *Columbia Gas II*, suggesting that

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[10] Even so, the court conceded that its statements in *AGD II*, 893 F.2d at 356-357, and *Columbia Gas Transmission Corp.* v. *FERC*, 831 F.2d 1135, 1141 (D.C. Cir. 1987) (*Columbia Gas I*), suggesting "that a rate violates the filed rate doctrine simply because a customer cannot respond in some way that enables it to escape the charge" were "clearly inconsistent" with the Commission's powers to establish, and alter prospectively, charges that are avoidable (if at all) only through the sometimes elaborate process of securing an abandonment under Section 7 of the Act, 15 U.S.C. 717f. Pet. App. 19a.

[11] See *Berkshire Gas Co.* v. *Associated Gas Distributors*, petition for cert. pending, No. 89-1988 (filed June 20, 1990); *Tennessee Small General Service Customer Group* v. *Associated Gas Distributors*, petition for cert. pending, No. 89-1989 (filed June 21, 1990); *Tennessee Gas Pipeline Co.* v. *Associated Gas Distributors*, petition for cert. pending, No. 89-1990 (filed June 21, 1990); *Natural Fuel Gas Supply Corp.* v. *Associated Gas Distributors*, petition for cert. pending, No. 89-2000 (filed June 22, 1990).

the petition be held and disposed of as appropriate in light of the Court's disposition of the certiorari petitions filed by the Commission and others in *AGD II*. In addition, various pipelines have filed a certiorari petition seeking plenary review of the D.C. Circuit's decision in *Columbia Gas II*. See *Panhandle Eastern Pipe Line Co.* v. *Columbia Gas Transmission Corp.*, petition for cert. pending, No. 89-2001 (filed June 22, 1990).

Although the decision below is of substantial practical importance and rests on a fundamentally mistaken view of the filed rate doctrine, we do not urge the Court to grant plenary review. For the reasons given in our certiorari petition (at 18-20) in *Columbia Gas II*, we believe that if (as we urge) the Court grants plenary review in *AGD II*, its decision in that case will shed considerable light on the appropriate disposition of this case (and *Columbia Gas II*).[12] We therefore suggest that the instant petition be held and disposed of as appropriate in light of the Court's disposition of the certiorari petitions filed in *AGD II* and *Columbia Gas II*.

[12] We explain in our certiorari petition (at 13-18) in *Columbia Gas II* that the D.C. Circuit did not hold that Section 4(d) prohibited rate increases with pre-filing effective dates, but instead fashioned a requirement that the Commission give a distinct, extra-statutory form of notice to customers that they might later be billed an additional amount by the pipeline. For the reasons stated in our petition in *Columbia Gas II*, that was error. That discussion applies equally to the D.C. Circuit's rejection of the Commission's reliance on Section 4(d) in this case.

CONCLUSION

The petition for a writ of certiorari should be held and disposed of as appropriate in light of the Court's disposition of (1) the petition for a writ of certiorari in *FERC* v. *Associated Gas Distributors*, petition for cert. pending, No. 89-2016, and the other certiorari petitions seeking review of the judgment of the District of Columbia Circuit in that case (see note 11, *supra*) and (2) the petition for a writ of certiorari in *FERC* v. *Columbia Gas Transmission Corp.*, petition for cert. pending, No. 90-131 (filed July 18, 1990), and the other certiorari petition seeking review of the judgment of the District of Columbia Circuit in that case, *Panhandle Eastern Pipe Line Co.* v. *Columbia Gas Transmission Corp.*, petition for cert. pending, No. 89-2001 (filed June 22, 1990).[13]

Respectfully submitted.

JOHN G. ROBERTS, JR.
Acting Solicitor General *

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General Counsel
Federal Energy Regulatory Commission

AUGUST 1990

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[13] For the same reasons, the certiorari petition filed by Transwestern seeking plenary review of the D.C. Circuit's decision in the instant case, *Transwestern Pipeline Co.* v. *Kansas Power & Light Co.*, 90-344, should also be held and disposed of as appropriate in light of *FERC* v. *Associated Gas Distributors*, No. 89-2016; *FERC* v. *Columbia Gas Transmission Corp.*, No. 90-131, and related cases.

* The Solicitor General is disqualified in this case.

APPENDIX

STATUTORY PROVISIONS INVOLVED

1. Section 4 of the Natural Gas of 1938, 15 U.S.C. 717c, provides in relevant part:

Rates and Charges

(a) **Just and reasonable rates and charges**

All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) **Undue preferences and unreasonable rates and charges prohibited**

No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) **Filing of rates and charges with Commission; public inspection of schedules**

Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient

form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) **Changes in rates and charges; notice to Commission**

Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

* * * *

2. Section 5(a) of the Natural Gas Act, 15 U.S.C. 717d(a), provides:

Fixing rates and charges; determination of cost of production or transportation

Decreases in rates

Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

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